United Nations S/2005/90

Security Council

Distr.: General
22 February 2005

Original: English

Letter dated 15 February 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 16 December 2004 (S/2004/1005). The Counter-Terrorism Committee has received the attached fifth report from Australia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

05-26054 (E) 040405

Annex

Letter dated 15 February 2005 from the Permanent Representative of Australia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

I am writing in response to your letter of 15 November 2004 following up Australia's fourth report to the Committee and requesting updates on implementation of a range of counter-terrorism issues. The updated information you requested is attached (see enclosure).

I would also take this opportunity to assure you of Australia's continuing support for the important work of your Committee and our commitment to maintaining a leadership position in the Asia-Pacific region in support of cooperative counter-terrorism efforts at the bilateral, regional and global levels. As a nation tragically aware of the human costs of terrorism, Australia remains a strong ally in your Committee's efforts to combat this scourge.

(*Signed*) John **Dauth**

Enclosure

Fifth report to the Counter-Terrorism Committee

Australia remains a strong supporter of international and domestic efforts to defeat terrorism. As noted in previous reports to the Committee, since the adoption of Resolution 1373, Australia has put in place extensive measures to prevent the financing of, preparations for and basing from Australia of terrorist attacks.

Australia has pleasure in responding to the request from the Counter-Terrorism Committee of the United Nations Security Council for further information on a few aspects of Australia's fourth report to the Committee regarding the implementation of Resolution 1373 (2001).

Financial Action Task Force (FATF) Revised Recommendations

The Committee sought an update on Australia's implementation of the Financial Action Task Force on Money Laundering (FATF) Revised Recommendations, in particular, Special Recommendation VIII.

Australia notes that UNSCR 1373 does not specifically require compliance with the revised FATF Forty Recommendations, or the FATF 9 Special Recommendations on Terrorist Financing. Nevertheless, Australia has fully implemented most of the Special Recommendations and partly implemented the remainder. Australia is currently reviewing its anti-money laundering/combating the financing of terrorism (AML/CFT) system with a view to implementing the Forty Recommendations and 9 Special Recommendations.

Australia is pleased to provide the Committee with an update on implementation of each of the FATF 9 Special Recommendations on Terrorist Financing.

SR I. Ratification and implementation of UN instruments

Australia ratified the UN International Convention for the Suppression of the Financing of Terrorism in 2002 and has implemented its obligations through the *Suppression of the Financing of Terrorism Act 2002* (SFT Act). This included amendments to the Criminal Code 1995 to criminalise the financing of terrorism, and amendments to the *Charter of the United Nations Act 1945* to make it an offence (punishable by up to five years imprisonment) to hold assets that are owned or controlled by terrorist organisations or individuals, or to make assets available to them. The terrorist asset freezing requirements under UNSCR 1373 and UNSCR 1267 are implemented through the *Charter of the United Nations Act 1945*.

SR II. Criminalising the financing of terrorism and associated money laundering

Under the Criminal Code 1995, it is an offence to provide, or receive funds from, a terrorist organisation. It is also an offence to provide or collect funds for a terrorist act.

Penalties range from imprisonment for 25 years to imprisonment for life. All Federal indictable offences are money laundering predicate offences.

SR III. Freezing and confiscating terrorist assets

Australia's terrorist asset freezing provisions are contained in Part 4 of the *Charter of the United Nations Act 1945*. The Act makes it an offence to deal with assets, where the asset or the owner of the asset is listed by the Minister for Foreign Affairs, or is listed by the United Nations Al-Q'aida and Taliban Sanctions Committee.

Property that is the proceeds of, or involved in, the financing of terrorism, terrorist acts or terrorist organisations can be confiscated through the *Proceeds of Crime Act 2002*.

SR IV. Reporting suspicious transaction related to terrorism

Cash dealers, as defined under section 3 of the *Financial Transaction Reports Act 1988* (FTR Act), are required to report their suspicions to AUSTRAC—Australia's financial intelligence unit—where they suspect funds are linked or related to any indictable offence, including terrorist activity. These requirements are contained within the FTR Act.

Australia is in the process of undertaking a review of AML/CFT measures with a view to extending these obligations to a broader range of entities such as lawyers and accountants.

SR V. International cooperation

Australia has extensive mutual legal assistance and information exchange mechanisms in place to provide significant assistance to another country in regard to criminal, civil and administrative investigations and proceedings relating to the financing of terrorism.

In Australia, the Director of AUSTRAC may spontaneously exchange financial intelligence with his international counterparts without the need to follow formal mutual assistance treaty procedures.

The *Mutual Assistance in Criminal Matters 1987* legislation also provides a basis for Australia's extensive network of mutual assistance treaties and arrangements which enable exchange of intelligence and evidence in criminal matters.

SR VI. Alternative remittance

In Australia, alternative remittance dealers fall within the definition of 'cash dealers' under the FTR Act, and are therefore subject to the same requirements as financial institutions, including in their reporting obligations to AUSTRAC. Australia is in the process of undertaking a review of AML/CFT measures with a view to including enhanced arrangements for those required to report under the revised legislation.

SR VII. Wire transfers

Australia has had extensive reporting of wire transfers since 1991. Under section 17B of the FTR Act, all international funds transfer instructions (IFTIs) sent into and out of the country are reported to AUSTRAC.

Australia is in the process of undertaking a review of AML/CFT measures with a view to enhancing the current IFTIs regime to address differences between the regime and Special Recommendation VII.

SR VIII. Non-profit organisations

Australian non-profit organisations are generally subject to similar registration and disclosure requirements as other legal entities and arrangements. Depending on their legal status and structure, the supervision of non-profit organisations is carried out by the Australian Securities Investment Commission, the Australian Taxation Office (ATO) or State and Territory authorities.

Non-profit organisations are required to register with the ATO for taxation purposes if they have a turnover of more than AUD 100,000 per year or if they are seeking eligibility for tax concessions or to be treated as deductible gift recipients.

The ATO undertakes a variety of auditing processes in relation to not-for-profit entities, including:

- identifying non-profit organisations that inappropriately operate outside the revenue system, such as through data matching techniques
- identifying organisations that may be inappropriately claiming concessional status as a charity
- monitoring for aggressive tax planning behaviour, including through the use of 'closely controlled' charities.

SR IX. Cash Couriers

Australian law requires all transfers of physical currency into or out of the country of AUD 10,000 or more, or the equivalent in foreign currency, to be reported to AUSTRAC. This requirement is set out in section 15 of the FTR Act.

The declaration system for passengers on an aircraft or ship required by the Act has been in operation since approximately 1990. Customs declaration cards completed by all departing and arriving passengers include a question relating to the transfer of currency. If a passenger indicates that currency equal to or greater than AUD 10,000 is being transferred, an International Currency Transfer Report (ICTR) must be completed and handed to an Australian Customs Service officer for forwarding to AUSTRAC. Customs performs intelligence-driven and random targeting of passengers to ensure that ICTRs have been lodged, where necessary, and that the reported details are correct.

UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunitions

The Committee sought an update on implementation into domestic law of the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunitions (the Firearms Protocol).

Australia is currently taking steps to ratify the Firearms Protocol. Under Australia's federal system of government, the States and Territories control and regulate many aspects of firearms, their parts and ammunition. The Australian Government is in the process of consulting with the States and Territories about implementation of the Protocol.

Specific activities being undertaken to bring Australia into line with our obligations under the Protocol include:

- reviewing the regulation of firearm manufacturers in Australia;
- conducting a scoping study into the development of a national firearms management system to improve firearm record keeping and tracing arrangements across all Australian jurisdictions; and
- investigating possibilities for the marking of firearms at import.

The Convention for the Marking of Plastic Explosives for the Purpose of Detection (MARPLEX)

The Committee has sought an update on whether Australia has decided to become a signatory to the Convention on the Marking of Plastic Explosives for the Purpose of Detection (MARPLEX Convention).

Australia is pleased to advise the Committee that it is taking steps, as a matter of priority, to accede to the MARPLEX Convention. During the 2004 Federal Government elections, the Government made a commitment to sign and implement MARPLEX.

Regional Assistance

The Committee regularly seeks information from Australia regarding our provision of assistance to other States in relation to the implementation of UNSC 1373.

Australia recently provided an update of our bilateral counter-terrorism assistance activities for inclusion in the CTC's Assistance Matrix.

United Nations S/2005/91

Security Council

Distr.: General
22 February 2005

Original: English

Letter dated 11 February 2005 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 16 December 2004 (S/2004/1006).

The Counter-Terrorism Committee has received the attached fifth report from Estonia submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Andrey I. **Denisov**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

05-25358 (E) 040405

Annex

Note verbale dated 25 January 2005 from the Permanent Mission of Estonia to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Republic of Estonia to the United Nations presents its compliments to the Chairman and has the honour to forward the fifth report to the Counter-Terrorism Committee regarding the implementation of resolution 1373 (2001) (see enclosure).

Enclosure

1. Implementation measures of UN Security Council resolution 1373 (2001)

1.1. The amendments to the Money Laundering Prevention Act entered into force 1 January 2004. Since this date the act is called the Money Laundering and Terrorist Financing Prevention Act.

1.2. 1. The amendments of the Aviation Act should be submitted to the Government for approval in the beginning of 2005, and subsequently submitted to the Parliament.

As regards to details concerning the sharing of responsibilities between entities involved in aviation security and key security measures that shall be implemented to protect civil aviation against acts of unlawful interference, the National Civil Aviation Security Programme (NCASP) that was adopted by the National Civil Aviation Security Committee on 30 May 2003 comprises those.

2. The Maritime Safety Act's Amendment Act has been presented to the Parliament (The Riigikogu) and the first reading of the draft was completed on 12 January 2005.

The draft Act has been repeatedly reviewed according to the ISPS Code and the regulation of the European Parliament and the Council of 31 March 2004 on enhancing ship and port facility security (EC) No 725/2004. In principle the regulation repeats provisions of the ISPS Code. The European Parliament and Council are now preparing a new directive on enhancing port security.

On 15 July 2004 an Expert Committee was established by the Government of Estonia with the objective of elaborating national maritime security program. The Committee has initiated its work, which consists of the analysis of the security situation, risk analysis and drawing up security plans for vessels and ports. Underlying bases for that are the ISPS Code and regulation (EC) No 725/2004.

1.3. Security Police Board (responsible administrative and investigative authority in counter terrorism matters) officials working on counter terrorism issues have been trained to use various techniques for tracing suspicious assets.

1.4. According to the Money Laundering and Terrorist Financing Prevention Act paragraph 13 (3) the head of a credit or financial institution is required to establish a code of conduct for employees to prevent money laundering and terrorist financing, and to establish internal audit rules to monitor compliance with the code of conduct. The Minister of Finance has to establish requirements for the code of conduct by credit and financial institutions, for the internal audit rules to monitor compliance with the code of conduct and for the application of such documents.

The draft of these requirements has been sent to the relevant authorities and institutions for comments.

Financial Supervision Authority (FSA) has prepared a draft regulation on additional measures for the improvement of internal procedural rules for credit and financial institutions in connection with the enforcement of the sanctions imposed on the basis of International Sanctions Act or of other request for the legal assistance, which is available for comments on the web site of the FSA. The guidelines on the enforcement of financial sanctions will become applicable as soon as the International Sanctions Act has been amended and the basis for such a guideline has been established.

1.5. Persons that are not subject to international sanctions but are suspected of financing terrorism fall within the scope of the Money Laundering and Terrorist Financing Prevention Act.

1.6. The Security Police Board of Estonia has concluded several Memoranda of Understanding (MoU) with Tax and Customs Board, Border Guard Board and General Staff of Defence Forces. MoU-s provide the framework for exchange of information, establishment of joint investigation teams, usage of technical means and usage of forensic and technical experts.

1.7. Penal Code enacts following crimes: computer sabotage (§ 206), damaging of connection to computer network (§ 207), spreading of computer viruses (§ 208). Misuse of internet causing health damage or death or unlawful seizure, damage or destruction of property and if this act is committed with the intention to provoke war or international conflict or for political or religious causes is considered as an act of terrorism according to the Penal Code § 237.

Estonia has also joined the Council of Europe Convention on Cybercrime, signed in Budapest on 23 November 2001, which aim is more effective combat against international cybercrime and which for that purpose enacts relevant measures, including international co-operation, to achieve that.

1.8. 1. The Parliament adopted The Name Act on 15 December 2004 and it will enter into force on 31 March 2005.

According to the act there must be a compelling reason to give a person a new given name or surname. Normally a new given name, surname or personal name is given to a person just once. It is within the authority of a Minister for Regional Affairs to decide.

The Name Act also regulates the application of a personal name when documenting personal data. Personal name is applied according to name laid on

travel document or other legalised (or verified with apostille) document. Once applied personal name is the basis for further documents that are issued to that person.

2. Estonian citizenship is acquired, resumed or lost under the conditions and pursuant to the procedure provided for in "Citizenship Act".

Citizenship is acquired by birth, by naturalisation or resumed by a person who lost Estonian citizenship as a minor. It is acquired by birth if at least one of the parents of the child holds Estonian citizenship at the time of the birth of the child or the child is born after the death of his or her father and if the father held Estonian citizenship at the time of his death.

According to the Citizenship Act an alien who wishes to acquire Estonian citizenship by naturalisation shall:

1) be at least 15 years of age;

2) have stayed in Estonia permanently on the basis of a permanent residence permit for at least five years prior to the date on which he or she submits an application for Estonian citizenship and for six months from the day following the date of registration of the application;

3) have knowledge of the Estonian language in accordance with the requirements provided for in the Citizenship Act;

4) have knowledge of the Constitution of the Republic of Estonia and the Citizenship Act in accordance with the requirements provided for in the Citizenship Act;

5) have a permanent legal income which ensures his or her own subsistence and that of his or her dependants;

6) be loyal to the Estonian state;

7) take an oath: "In applying for Estonian citizenship, I swear to be loyal to the constitutional order of Estonia."

Estonian citizenship may also be granted for achievements of special merit.

Citizenship and Migration Board regulates the arrangements related to citizenship. Decisions on the granting or resumption of Estonian citizenship shall be taken by the Government.

Government has also adopted "Regulation on implementation of the Citizenship Act", which stipulates the forms of application of acquirement, resumption and losing of Estonian citizenship.

1.9. Estonia considers the security of national identity papers and travel documents continually an important subject as well as the replacement of old documents that are still in use.

1.10. Strategic goods act entered into force 5 February 2004. Act regulates export of strategic goods and transit thereof through Estonia, as well as import of military

goods, export of services related to military goods and ensuring supervision of the import and end-use of strategic goods. Act also defines brokering, sets up prerequisites for brokering and establishes a brokering register.

According to act special authorisation shall be required for the import, export and carriage in transit of goods included in the list of strategic goods and for the provision of services.

Act enacts bases related to requesting and issuing licences and transit permissions. The Strategic Goods Commission is formed at the Ministry of Foreign Affairs. The commission, that includes representatives of the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of Economic Affairs and Communications, the Security Police Board, the Police Board and the Tax and Customs Board, issues licences and transit permissions. The commission shall refuse to issue a licence, if :there is information that the goods may be used to endanger national, regional or international security, including for terrorist acts.

In order to ensure the operation of the commission, the Ministry of Foreign Affairs shall maintain the state register of brokers of military goods, and the database of Individual Import Licences, Export Licences, Transit Permissions, General Export Authorisation User Certificates and end-use control documents relating to strategic goods which is a state agency database, as defined in the Databases Act. By collecting and using information, the commission shall co-operate with appropriate foreign authorities and international organisations and perform the consultation obligation and the obligation to exchange information concerning strategic goods imposed on Estonia by international agreements.

The commission guarantees control over the import and end-use of strategic goods with the end-use control documents. Control over the import and end-use of strategic goods is exercised by the Security Police Board, the Police Board and the Tax and Customs Board within the limits of their competence on the basis of end-use control documents. Control over the import, export and transit of strategic goods shall be exercised by the Tax and Customs Board within the limits of competence. Control over services related to military goods shall be exercised by the Security Police Board. The Tax and Customs Board and the Security Police Board shall notify the commission immediately of any offences related to strategic goods which are discovered and violations of international sanctions. The commission shall submit an activity report to the Government of the Republic at least once a year.